

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

JOSEPH A. KAUFMAN, M.D.,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY
OF AMERICA,

Defendant.

2:06-cv-00621-ECR-LRL

ORDER

This long-term disability benefits case comes before the court on defendant's Motion for Sanctions Against Kaufman for Failure to Comply with Court Order Requiring Him to Produce Documents (#47). The court has considered the motion, plaintiff's Opposition (#49), and defendant's Reply (#50).

On November 5, 2009, this court granted defendant's Motion to Compel Production of Documents Relating to Kaufman's Stock Options (#31), and ordered plaintiff to supplement his response to Document Request No. 2, which called upon plaintiff to provide "[f]or each year between 1997 and 2005 any and all agreements, contracts, correspondence, or other documentation that reflects, discusses, modifies, or sets forth any financial agreement or arrangement between Dr. Joseph Kaufman and his employers or partners." Through discovery defendant had learned that plaintiff had received post-disability annual stock options from his employer. The focus of the follow-up regarding Document Request No. 2 was to determine whether those stock options constituted post-disability monthly earnings. Hence, defendant pressed plaintiff to produce documents relating to the *terms under which*

1 *Kaufman received the stock options.* In defendant's view, such information was critical in determining
2 whether the stock options constituted income and therefore should have been included as earnings in
3 defendant's calculation of benefits. If so, it is defendant's position that plaintiff has received benefits
4 to which he was not entitled.

5 This court agreed that the requested discovery was relevant, and ordered plaintiff to supplement
6 his response to Document Request No. 2 by November 13, 2009. When plaintiff had not done so by
7 December 15, 2009, defendant filed the instant motion for sanctions. Two weeks later plaintiff
8 produced "a complete accounting of his stock options, generated by his employer, for the complete time
9 frame requested by Defendants." Opposition (#49) at 2. With this production, plaintiff insists that he
10 has fully complied with the court's order.

11 In its Reply (#50), defendant characterizes plaintiff's production as "woefully inadequate."
12 Defendant complains that not one of the documents produced by plaintiff relates to the terms under
13 which he received the stock options; they relate only to the *amount* of stock options he received, which
14 is information defendant already has. Defendant argues that it cannot determine whether the stock
15 options constitute post-disability earnings without knowing the *terms under which* plaintiff received the
16 stock options. Because in defendant's view plaintiff has, in effect, significantly delayed its efforts to
17 acquire such evidence, defendant seeks an order either striking the complaint, striking plaintiff's reply
18 to defendant's counterclaim, or entering default judgment against plaintiff. In the alternative, defendant
19 suggests that either plaintiff "should be precluded from contesting that his stock options constitute
20 income, or [defendant] should be able to do additional discovery necessary to determine the terms of
21 [plaintiff's] agreement with his employer." Reply (#50) at 3, n.1. In addition, defendant seeks an award
22 of the attorney's fees it expended in briefing the motion to compel and this motion for sanctions.

23 It is apparent that plaintiff has not produced what he was ordered to produce. Defense counsel's
24 motions and correspondence make it clear that the discovery request at issue relates not to the *amount*
25 of stock options plaintiff received, but rather to the *terms* under which he received them. The court is
26 not convinced, however, that the extreme, case-dispositive sanctions requested by defendant are

1 warranted at this time. Instead, defendant will be given an opportunity to do limited additional
2 discovery on the nature of plaintiff's agreement with his employer concerning his post-disability stock
3 options. Accordingly, and for good cause shown,

4 IT IS ORDERED that defendant's Motion for Sanctions Against Kaufman for Failure to Comply
5 with Court Order Requiring Him to Produce Documents (#47) is granted to the following extent:

6 1. Discovery shall be reopened until July 16, 2010 for the defendant to conduct discovery
7 relating to the terms under which plaintiff received post-disability stock options; and

8 2. Plaintiff shall, not later than August 2, 2010, pay to counsel for defendant the sum of
9 \$1,000.00 as the reasonable attorney's fees incurred in making this motion for sanctions.

10 DATED this 1st day of June, 2010.

11 

12 _____
13 **LAWRENCE R. LEAVITT**
14 **UNITED STATES MAGISTRATE JUDGE**